

THOMAS R. Burke (CA State Bar No. 141930)

[thomasburke@dwt.com](mailto:thomasburke@dwt.com)

DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599

JONATHAN R. DONNELLAN

[jdonnellan@hearst.com](mailto:jdonnellan@hearst.com) (*pro hac vice*)

DIEGO IBARGUEN

[dibarguen@hearst.com](mailto:dibarguen@hearst.com) (*pro hac vice*)

HEARST CORPORATION  
300 W. 57th Street, 40th Floor  
New York, New York 10019  
Telephone: (212) 841-7000  
Facsimile: (212) 554-7000

Attorneys for Defendant  
HEARST COMMUNICATIONS, INC.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

SHAHID BUTTAR FOR CONGRESS  
COMMITTEE, et al.,

Plaintiffs,

vs.

HEARST COMMUNICATIONS, INC.,

Defendant.

Case No. 3:21-cv-05566-EMC

**DEFENDANT HEARST  
COMMUNICATIONS, INC.'S NOTICE OF  
MOTION TO DISMISS AND SPECIAL  
MOTION TO STRIKE PLAINTIFFS'  
COMPLAINT**

**[Cal. Code Civ. Pro. § 425.16;  
Fed. R. Civ. P. 12(b)(6)]**

Date: March 17, 2022

Time: 1:30 p.m.

Place: Courtroom 5, 17<sup>th</sup> Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 17, 2022, at 1:30 p.m. in Courtroom 5, 17<sup>th</sup> Floor of the United States District Court for the Northern District of California, located in the San Francisco Courthouse at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Hearst Communications, Inc., ("Hearst") will and hereby does move this Court for an order

1 dismissing Plaintiffs' claims against it pursuant to California Code of Civil Procedure § 425.16  
 2 and Fed. R. Civ. P. 12(b)(6), and for an order granting Hearst its attorneys' fees pursuant to Cal.  
 3 Code Civ. P. § 425.16(c).

4 As set forth in more detail in the attached memorandum of points and authorities, the  
 5 Court should order the dismissal of Plaintiffs' claims against Hearst because:

6 1. California Code of Civil Procedure § 425.16 (the "anti-SLAPP statute") applies to  
 7 each of Plaintiffs' claims against Hearst because they all indisputably arise from Hearst's  
 8 reporting in connection with a public issue or an issue of public interest (a public controversy  
 9 sparked by allegations of sexual harassment made against a candidate for the U.S. House of  
 10 Representatives, the candidate's reaction to the allegations, and the public reaction to them), all  
 11 published in a public forum. *See* Cal. Civ. Proc. Code § 425.16(e)(3) and (4); Memorandum  
 12 ("Mem."). § IV.

13 2. Because the anti-SLAPP statute applies to all of Plaintiffs' claims against Hearst,  
 14 the burden shifts to Plaintiffs to establish a probability that they will prevail as to each claim.  
 15 Cal. Civ. Proc. Code § 425.16(b)(1); Mem. § IV. Because Hearst challenges the legal  
 16 sufficiency of Plaintiffs' claims, Plaintiffs must show they have alleged sufficient facts to raise a  
 17 right to relief above the speculative level. *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for*  
 18 *Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1446 (2019); *Ashcroft*  
 19 *v. Iqbal*, 556 U.S. 662, 668 (2009). Plaintiffs cannot meet their burden for the following reasons,  
 20 among others:

21 3. Plaintiffs fail to identify specific statements they allege are defamatory, which is  
 22 required under settled California law. *See* Mem. § V(1).

23 4. Even if Plaintiffs had sufficiently pled that they were defamed by Hearst's  
 24 reporting on a public controversy sparked by public allegations made against a candidate for  
 25 elected office, Plaintiffs cannot prove that Hearst's published statements on this matter are false;  
 26 to the contrary Hearst's reporting on this matter accurately and impartially recounts the nature of  
 27 allegations made against a candidate for election to the U.S. House of Representatives, the  
 28

1 candidate's denial of those allegations, and the public reaction to the allegations. Hearst's  
2 published statements on this matter of public interest are substantially true, and, accordingly,  
3 Plaintiffs fail to sufficiently plead they were defamed. *See* Mem. § V(1).

4 5. Plaintiffs will be unable to prove damages. Plaintiffs have insufficiently pled that  
5 they suffered any special damages, and the Complaint does not adequately plead that they are  
6 entitled to any other damages because they failed to demand a correction, as required by  
7 California Civil Code § 48(a). *See* Mem. § V(2).

8 6. Even accepting all of Plaintiffs' facts as true, the Complaint nevertheless fails to  
9 sufficiently plead any facts that make plausible their allegation that Hearst's reporting on this  
10 matter was published with actual malice – *i.e.*, with knowledge that the statements were false or  
11 with reckless disregard as to whether they were true – much less facts that could satisfy the  
12 “clear and convincing” standard applicable, as a matter of law, to defamation actions brought by  
13 public figures. *See* Mem. § V(3).

14 7. Plaintiffs' claim of unfair business acts and practices in violation of Cal. Bus. &  
15 Prof. Code §§ 17200 et seq., is derivative of and turns entirely on Plaintiffs' defamation claim.  
16 Because their defamation claim fails, so, too, must their derivative claim under § 17200. *See*  
17 Mem. § V(4).

18 Accordingly, this Court should grant Hearst's motion and dismiss Plaintiffs' claims, with  
19 prejudice, pursuant to Fed. R. Civ. P. 12(b)(6) and Cal. Civ. Proc. Code § 425.16(b)(1). Hearst  
20 also requests that it be awarded its attorneys' fees and costs incurred in defending this meritless  
21 lawsuit, pursuant to Cal. Civ. Proc. Code § 425.16(c), in an amount to be determined by  
22 subsequent motion.

23 This motion is based on this notice; the attached memorandum of points and authorities;  
24 the concurrently filed request for judicial notice; the concurrently filed declaration of Diego  
25 Ibarquen with Exhibits A-H; any other matters of which this Court may take judicial notice; all  
26 pleadings, files and records in this action; and such other argument as this Court may receive at  
27 this motion's hearing.

DATED: December 2, 2021

THOMAS R. BURKE  
DAVIS WRIGHT TREMAINE LLP

JONATHAN R. DONNELLAN (*pro hac vice*)  
DIEGO IBARGUEN (*pro hac vice*)  
HEARST CORPORATION

By: /s/ Diego Ibarguen

Attorneys for Defendant  
HEARST CORPORATION

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
MEMORANDUM OF POINTS AND AUTHORITIES .....	1
I.    INTRODUCTION .....	1
II.   STATEMENT OF FACTS .....	3
III.  STANDARD OF REVIEW .....	6
IV.   SECTION 425.16 APPLIES TO PLAINTIFFS’ CLAIMS .....	8
V.    THE COMPLAINT FAILS TO PLEAD SUFFICIENT FACTS TO STATE A CLAIM FOR DEFAMATION .....	9
1.    Hearst’s Published Statements are Substantially True.....	9
2.    Plaintiffs Did Not Adequately Demand a Correction or Plead Compensable Damages as Required by California Law.....	15
3.    Plaintiffs Cannot Show That Any Statement Was Published with Actual Malice.....	18
4.    Plaintiffs’ Derivative Claim Under Cal. Bus. & Prof. Code §§ 17200, et seq. Also Fails.....	21
VI.   PLAINTIFF BUTTAR CAMPAIGN FAILS TO STATE A CLAIM.....	21
VII.  CONCLUSION.....	22

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

<i>Aisenson v. Am. Broad. Co.,</i> 220 Cal. App. 3d 146 (1990) .....	8
<i>Anschutz Ent. Grp. v. Snepp,</i> 171 Cal. App. 4th 598 (2009) .....	15, 16, 18
<i>Ashcroft v. Iqbal,</i> 556 U.S. 662 (2009) .....	2, 2, 6, 7
<i>Bell Atl. Corp. v. Twombly,</i> 550 U.S. 544 (2007) .....	2, 6, 7
<i>Blatty v. N.Y. Times Co.,</i> 42 Cal. 3d 1033 (1986) .....	21
<i>Braun v. Chronicle Publ'g Co.,</i> 52 Cal. App. 4th 1036 (1997) .....	6, 8, 16, 22
<i>Colt v. Freedom Commc'ns, Inc.,</i> 109 Cal. App. 4th 1551 (2003) .....	12, 14
<i>Conroy v. Spitzer,</i> 70 Cal. App. 4th 1446 (1999) .....	12, 18
<i>Donald J. Trump for President, Inc. v. Cegavske,</i> 488 F. Supp. 3d 993 (D. Nev. 2020) .....	22
<i>Eisenberg v. Alameda Newspapers, Inc.,</i> 74 Cal. App. 4th 1359 (1999) .....	10
<i>Eva v. Smith,</i> 89 Cal. App. 324 (1928) .....	8
<i>Field Research Corp. v. Superior Ct. of S.F.,</i> 71 Cal. 2d 110 (1969) .....	16
<i>Flowers v. Carville,</i> 310 F.3d 1118 (9th Cir. 2002) .....	10
<i>Forsher v. Bugliosi,</i> 26 Cal. 3d 792 (1980) .....	14

1	<i>Freedom Newspapers, Inc. v. Superior Ct.,</i>	
2	4 Cal. 4th 652 (1992) .....	15, 16
3	<i>Gang v. Hughes,</i>	
4	111 F. Supp. 27 (S.D. Cal. 1953).....	17
5	<i>In re Gilead Scis. Sec. Litig.,</i>	
6	536 F.3d 1049 (9th Cir. 2008) .....	7
7	<i>Glassdoor, Inc. v. Superior Ct.,</i>	
8	9 Cal. App. 5th 623 (2017) .....	10
9	<i>Harte-Hanks Commc'ns, Inc. v. Connaughton,</i>	
10	491 U.S. 657 (1989).....	20
11	<i>Hawran v. Hixson,</i>	
12	209 Cal. App. 4th 256 (2012) .....	21
13	<i>Issa v. Applegate,</i>	
14	31 Cal. App. 5th 689 (2019) .....	11
15	<i>Kaelin v. Globe Commc'ns Corp.,</i>	
16	162 F.3d 1036 (9th Cir. 1998) .....	11
17	<i>Kieu Hoang v. Phong Minh Tran,</i>	
18	60 Cal. App. 5th 513 (2021) .....	18
19	<i>Lujan v. Defenders of Wildlife,</i>	
20	504 U.S. 555 (1992).....	22
21	<i>Masson v. New Yorker Magazine, Inc.,</i>	
22	501 U.S. 496 (1991).....	9, 10, 12
23	<i>Matson v. Dvorak,</i>	
24	40 Cal. App. 4th 539 (1995) .....	8, 12
25	<i>McGarry v. Univ. of San Diego,</i>	
26	154 Cal. App. 4th 97 .....	18, 20
27	<i>Miami Herald Publ'g Co. v. Tornillo,</i>	
28	418 U.S. 241 (1974).....	13
	<i>Mullins v. Thieriot,</i>	
	19 Cal. App. 3d 302 (1971) .....	14
	<i>Navellier v. Sletten,</i>	
	106 Cal. App. 4th 763 (2003) .....	9

1	<i>New York Times Co. v. Sullivan</i> ,	
2	376 U.S. 254 (1964).....	<i>passim</i>
3	<i>United States ex rel. Newsham v. Lockheed Missiles &amp; Space Co.</i> ,	
4	190 F.3d 963 (9th Cir. 1999) .....	7
5	<i>Partington v. Bugliosi</i> ,	
6	56 F.3d 1147 (9th Cir. 1995) .....	10, 14, 15
7	<i>Phila. Newspapers, Inc. v. Hepps</i> ,	
8	475 U.S. 767 (1986).....	9
9	<i>Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.</i> ,	
10	946 F. Supp. 2d 957 (N.D. Cal. 2013) .....	15
11	<i>Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress</i> ,	
12	890 F.3d 828 (9th Cir. 2018) .....	2, 7
13	<i>Pridonoff v. Balokovich</i> ,	
14	36 Cal. 2d 788 (1951) .....	17
15	<i>Reader’s Digest Ass’n v. Superior Ct.</i> ,	
16	37 Cal. 3d 244 (1984) .....	10, 18, 20
17	<i>Sarver v. Chartier</i> ,	
18	813 F.3d 891 (9th Cir. 2016) .....	7
19	<i>Selleck v. Globe Int’l Inc.</i> ,	
20	166 Cal. App. 3d 1123 (1985) .....	11
21	<i>Sipple v. Found. For Nat’l Progress</i> ,	
22	71 Cal. App. 4th 226 (1999) .....	7, 8, 18
23	<i>Spokeo, Inc. v. Robins</i> ,	
24	578 U.S. 330 (2016).....	22
25	<i>St. Amant v. Thompson</i> ,	
26	390 U.S. 727 (1968).....	20
27	<i>In re Syntex Corp. Sec. Litig.</i> ,	
28	95 F.3d 922 (9th Cir. 1996) .....	6
	<i>Taus v. Loftus</i> ,	
	40 Cal. 4th 683 (2007) .....	9
	<i>Thomas v. L.A. Times Commc’ns, LLC</i> ,	
	189 F. Supp. 2d 1005 (C.D. Cal. 2002) .....	14, 15



1	<i>Underwager v. Channel 9 Austl.,</i>	
2	69 F.3d 361 (9th Cir. 1995) .....	14
3	<i>Varian Med. Sys., Inc. v. Delfino,</i>	
4	35 Cal. 4th 180 (2005) .....	9
5	<i>Vogel v. Felice,</i>	
6	127 Cal. App. 4th 1006 (2005) .....	9, 12
7	<i>Ward v. News Grp. Int’l, Ltd.,</i>	
8	733 F. Supp. 83 (C.D. Cal. 1990) .....	12
9	<i>Winter v. DC Comics,</i>	
10	30 Cal. 4th 881 (2003) .....	6
11	<i>Yorty v. Chandler,</i>	
12	13 Cal. App. 3d 467 (1970) .....	8

#### **Statutes**

13	Cal. Bus. & Prof. Code §§ 17200 et seq. ....	3
14	Cal. Civ. Code § 48(a) .....	<i>passim</i>
15	Cal. Civ. Proc. Code § 425.16 .....	<i>passim</i>

#### **Other Authorities**

16	Fed. R. Civ. P. 12(b)(6).....	<i>passim</i>
----	-------------------------------	---------------

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Candidates for elected office necessarily expose themselves to intense public scrutiny and criticism, not just of their political positions, but also of their qualifications for office, their character and their integrity. Public discussion of a candidate's fitness for elected office is so fundamental to democracy as to be at the core of the core of constitutionally protected political speech. And the press plays a central role in informing the public about the issues and controversies relevant to the decisions they make at the ballot box. This lawsuit is a misguided effort to punish a newspaper for providing reporting on precisely such core political concerns.

Plaintiff Shahid Buttar (hereinafter, "Buttar") was a candidate in the November 3, 2020 general election for California's 12th U.S. Congressional District in the 2020 general election, seeking to unseat one of the most powerful members of Congress, U.S. Rep. Nancy Pelosi, the sitting Speaker of the House and the second person in the presidential line of succession. On July 21, 2020, in the heat of his campaign for the House, Buttar was at the center of a public controversy about his character after an acquaintance published an essay on the website *Medium* alleging that Buttar sexually harassed her decades earlier. The allegations were quickly and widely discussed, and led some political groups and politicians that had previously endorsed Buttar to publicly reconsider their support in light of the allegations. Buttar, too, entered the public discourse, denying the claims and expressing a hope that he, too, would have an opportunity to be heard.

In the wake of these events, several news publications, including the *San Francisco Chronicle*, a newspaper owned and operated by Defendant Hearst Communications, Inc. (hereinafter, "Hearst"), reported on this matter of significant public interest to voters. Hearst's reporting fairly and accurately informed the public on the nature of the controversy, the substance of the allegations against Buttar, Buttar's denial of those allegations and wish to be heard on the matter, and actions undertaken in response to the allegations by some political supporters.

1 Hearst was fulfilling its fundamental role in informing the voting public about the nature  
2 of this controversy about a candidate seeking to unseat one of the most powerful figures in  
3 American government. Nevertheless, a year after the public controversy arose, and nine months  
4 after he lost his election bid, Buttar, together with Plaintiff Shahid Buttar for Congress  
5 Committee (hereinafter, the “Buttar Campaign”), filed the present Complaint (ECF No. 1 in this  
6 action, hereinafter, the “Complaint” or “Compl.”) against only Hearst – and not against any of  
7 the many other publications that reported on the same controversy – alleging defamation and a  
8 derivative unfair competition claim.

9 The Complaint is frivolous and the facts it pleads betray the lack of merit of its claims.  
10 Plaintiffs identify no specific statement published by Hearst, as they are required to do by law,  
11 that forms the basis of their defamation claim. They suggest that Hearst’s reporting should have  
12 included the opinions of their preferred sources to cast doubt on the truth of the allegations, but  
13 they plead facts reflecting that those people had no direct knowledge of the truth or falsity of the  
14 claims. They claim an entitlement to a variety of monetary damages, yet fail to plead any injury  
15 resulting directly from Hearst’s reporting, and they are, in any event, barred as a matter of law  
16 from recovering other damages because they do not plead that they demanded a correction in  
17 compliance with California’s correction statute. They allege Hearst reported on this public  
18 controversy with “actual malice,” but they fail to plead facts that would make their otherwise  
19 conclusory allegation plausible, as they are required to do under *Twombly* and *Iqbal*, and as  
20 required under *Sullivan* and its progeny. And they name the Buttar Campaign as a party, despite  
21 failing to plead any statement published by Hearst defamed it, and failing to plead that the  
22 campaign, which exists solely as a vehicle through which Buttar ran for elected office, suffered  
23 any injury at all.

24 The Complaint fails to plausibly plead a claim upon which relief can be granted. For  
25 these reasons, Hearst respectfully requests that the Court dismiss Plaintiffs’ claims in their  
26 entirety under Rule 12(b)(6) and California’s anti-SLAPP statute, and that it award Hearst its  
27 mandatory attorneys’ fees to be determined by separate motion pursuant to the anti-SLAPP law.

## II. STATEMENT OF FACTS

In July 2020, Plaintiff Buttar was a candidate in the November 3, 2020 general election for California’s 12th U.S. Congressional District in the 2020 general election, seeking to unseat U.S. Rep. Nancy Pelosi, the sitting Speaker of the House. Compl. ¶ 9. He was ultimately unsuccessful in this effort. Compl. ¶ 48.

On July 21, 2020, an acquaintance of Buttar, Elizabeth Croydon (hereinafter, “Croydon”), published an essay (“Croydon’s Essay”) on the web site Medium.com titled “*Shahid Buttar Repeatedly Sexually Harassed Me.*” Compl. ¶ 16; Declaration of Diego Ibarguen (“Ibarguen Decl.”), Ex. G. In her essay, Croydon alleged, among other things, that when she and Buttar were both living in Washington, D.C., in the early 2000s and were part of the same activism and arts community, Buttar “made [her] feel uncomfortable”; “repeatedly pursued [her] for sex”; and “let [her] know that he was sexually available to [her] for years”. Ibarguen Decl. Ex. G. Croydon’s Essay described an instance roughly a decade later in which she said she was “shocked and embarrassed” when, after Croydon discussed her celibacy, Buttar allegedly responded with comments that Croydon wrote made her feel “degraded, nauseated, and revolted that he would mock me in front of friends who looked to me as an outspoken voice for women.” Ibarguen Decl. Ex. G. At the conclusion of her essay, Croydon expressed the opinion: “We on the left must hold ourselves to a higher standard as we are committed to creating a just and equitable world, free from sexual misconduct, misogyny and bullying . . . . The left can do better than Shahid Buttar.” Ibarguen Decl. Ex. G.

The allegations in Croydon’s Essay immediately sparked a public discussion (Compl. ¶ 49 (“Ms. Croydon’s false accusations were immediately and consistently seized upon by critics across the political spectrum”)). On the same day, July 21, 2020, the fact that these public allegations were made against Buttar and the public discussion of them were the focus of multiple published news reports, including: an article published by the local online news site *Bay Area Reporter* titled, “Political Notebook: Pelosi challenger Buttar accused of sexual harassment, misogyny” (Compl. ¶ 27; Ibarguen Decl. Ex. C); an article published by the local online news

1 site *48 Hills* titled, “The end of Shahid Buttar’s Campaign – and the lessons” (Compl. ¶ 50;  
 2 Ibarguen Decl. Ex. F); and an article published by the local online news site *Mission Local* titled,  
 3 “Pelosi challenger Shahid Buttar accused of sexual harassment, misogyny” (Compl. ¶ 50;  
 4 Ibarguen Decl. Ex. E).

5 Also on July 21, 2020, Hearst published the first of two articles regarding the public  
 6 controversy sparked by the allegations, titled, “Shahid Buttar, Nancy Pelosi’s election opponent,  
 7 accused of sex harassment” (hereinafter, “Hearst’s First Article”). Compl. ¶¶ 2, 15. Hearst’s  
 8 First Article, published at 8:19 p.m., included a hyperlink to Croydon’s Essay. Ibarguen Decl.  
 9 Ex. A; Compl. ¶ 45. Hearst’s First Article also included a statement from Buttar stating that the  
 10 allegations “are false,” describing sexual harassment as “despicable”, and affirming that “[e]very  
 11 survivor must be heard, and I hope to be allowed the same opportunity to be heard as well”.  
 12 Ibarguen Decl. Ex. A. Hearst’s First Article also reported on public pronouncements by two  
 13 political organizations that had previously endorsed Buttar’s candidacy, which now said they  
 14 were reevaluating their endorsements in light of the allegations, and also that one local elected  
 15 official reacted to the allegations by having his name removed from Buttar’s website and signing  
 16 “a . . . petition to unendorse him”. *Id.* Acknowledging the public scrutiny that such allegations  
 17 must produce, Buttar’s statement to Hearst acknowledged that local organizations were  
 18 evaluating the allegations, stating “I invite their examination of the issues and our campaign  
 19 welcomes any scrutiny.” *Id.*

20 About ten minutes *after* Hearst’s First Article was published, a Buttar Campaign  
 21 representative emailed Hearst at 8:30 p.m. on July 21, 2020, offering to connect the newspaper  
 22 with “some people who can speak about [Mr. Buttar’s] character and other claims [Ms. Croydon]  
 23 has made in the past that are false – including one who alleges that she also made false claims  
 24 about her husband. Would you want to speak with them? We are reluctant to attack her  
 25 character out of respect to survivors . . . but they are willing to speak with you.” Compl. ¶ 21  
 26 (alteration in original) (emphasis omitted). That email did not suggest the people referenced had  
 27 any direct knowledge regarding Croydon’s claims about Buttar. *Id.* Early the next morning, at  
 28

5:44 a.m. on July 22, 2020, a representative of Buttar’s campaign emailed a Hearst reporter asserting that “‘a number of voices’ had been ‘left out’” of Hearst’s First Article, and requesting that Hearst interview individuals “closer to this situation.” (hereinafter, the “Request for Follow-up Coverage”) Compl. ¶ 30. The Request for Follow-up Coverage did not assert that any of these individuals had actual knowledge of the truth or falsity of Croydon’s claims about Buttar, nor did it demand a correction of Hearst’s First Article the day before. *Id.*

Two days later, on July 24, 2020, a group of 17 individuals published an “Open Letter of Support for Shahid Buttar” (hereinafter, the “Open Letter”) on the website called *Independent Political Report* asserting, among other things, that Croydon’s allegations “attempted to draw a different picture of Shahid than the one we know to be true.” Compl. ¶ 38; Ibarguen Decl. Ex. H. The signatories of the Open Letter stated the opinion that they “believe these allegations are false and ill intentioned,” and asserted that, based on unrelated actions they attributed to Croydon, the signatories believed “[s]he is NOT a credible witness.” Compl. ¶ 38; Ibarguen Decl. Ex. H. Of particular note, the Open Letter does not contain any assertions that the signatories had direct knowledge regarding the truth of Croydon’s claims about Buttar. Ibarguen Decl. Ex. H.

On July 24, 2020, Hearst published another article about the controversy (hereinafter, “Hearst’s Follow-Up Article” and together with Hearst’s First Article, “Hearst’s Articles” or “Hearst’s Reporting”), referencing and quoting from the Open Letter, and also quoting several activists who signed the Open Letter. Compl. ¶ 41; Ibarguen Decl. Ex. B. As with Hearst’s First Article, Hearst’s Follow-up Article also included hyperlinks to Croydon’s Essay. Compl. ¶ 45.

At no point did Plaintiffs serve a demand for correction on the publisher of the San Francisco Chronicle consistent with the requirements of California Civil Code § 48(a).

Nearly one year later, on July 20, 2021, on the last day of California’s statute of limitations period for defamation claims, Plaintiffs filed this action alleging they were defamed

by Hearst’s publication of “an article containing a false allegation that Congressional candidate Shahid Buttar had committed sexual harassment.” Compl. ¶ 2.

### III. STANDARD OF REVIEW

Hearst seeks dismissal of this action pursuant to both Rule 12(b)(6) and California’s anti-SLAPP law.

Under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 570 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although the Court must draw all reasonable inferences in favor of the nonmoving party and accept the facts alleged in the complaint as true, the plaintiff must still “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 570. However, in making this determination, a court need not credit “conclusory allegations of law and unwarranted inferences” in favor of plaintiff. *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996). Importantly, the Court must be mindful of the chilling effect that costly and protracted litigation can have on speech concerning public officials and candidates for public office. *See, e.g., Winter v. DC Comics*, 30 Cal. 4th 881, 892 (2003) (“because unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable.” (alteration and citations omitted)).

The California anti-SLAPP statute broadly protects the discussion of issues of public concern by “nip[ping] SLAPP litigation in the bud by striking offending causes of action[].” *Braun v. Chronicle Publ’g Co.*, 52 Cal. App. 4th 1036, 1042 (1997).

The anti-SLAPP statute provides that any “cause of action against a person arising from any act . . . in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” Cal. Civ. Proc. Code § 425.16(b)(1). The law applies to, among other things, “any . . . conduct in furtherance of the exercise of the

1 constitutional right of petition or the constitutional right of free speech in connection with a  
2 public issue or an issue of public interest.” *Id.* § 425.16(e)(4).

3 Once a defendant has shown that the anti-SLAPP statute applies to a claim against it, a  
4 court must look to the merits of the plaintiff’s claim. *Sarver v. Chartier*, 813 F.3d 891, 901 (9th  
5 Cir. 2016). Federal courts may consider arguments based on the anti-SLAPP statute at either the  
6 motion to dismiss or the summary judgment stage. *See Planned Parenthood*, 890 F.3d at 834.  
7 When, as here, “an anti-SLAPP motion to strike challenge[d] only the legal sufficiency of a  
8 claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and  
9 consider whether a claim is properly stated.” *Id.* at 834.

10 Accordingly, the procedural grounds for dismissal under anti-SLAPP are identical to  
11 those under Rule 12(b)(6): a plaintiff’s “[f]actual allegations must be enough to raise a right to  
12 relief above the speculative level . . . . [—]that is, a claim to relief that is plausible on its face.”  
13 *Twombly*, 550 U.S. at 555-56, 569. In determining whether the complaint states a “plausible”  
14 claim, this Court need not credit “mere conclusory statements” or “[t]hreadbare recitals of the  
15 elements of a cause of action . . . .” *Iqbal*, 556 U.S. at 678; *In re Gilead Scis. Sec. Litig.*, 536  
16 F.3d 1049, 1055 (9th Cir. 2008). If the plaintiff fails to satisfy the pleading standards under Rule  
17 12(b)(6), the Court must strike the claim, and award the moving party its attorneys’ fees under  
18 California’s substantive law, which applies to this action brought in diversity. *Planned*  
19 *Parenthood*, 890 F.3d at 834; Cal. Civ. Proc. Code § 425.16(b)(1), (b)(2), (c)(1); *United States*  
20 *ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 971 (9th Cir. 1999) (applying  
21 anti-SLAPP attorneys’ fees provision to state law claims brought in federal court).

22 Against these weighty concerns, the *Iqbal/Twombly* standard takes on particular  
23 relevance. Under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), to maintain an action  
24 for defamation, a public figure such as Plaintiffs in this action must plead that the defendant  
25 made the challenged statements with knowledge of their falsity or reckless disregard as to their  
26 falsity, and subsequently prove actual malice by “clear and convincing evidence”. *See, e.g.*,  
27 *Sipple v. Found. For Nat’l Progress*, 71 Cal. App. 4th 226, 248 (1999) (explaining that in public



figure defamation actions, the “clear and convincing” standard requires a showing that the speaker “entertained serious doubts as to the truth of the publication.”).

#### IV. SECTION 425.16 APPLIES TO PLAINTIFFS’ CLAIMS

Here, there is no question that the anti-SLAPP statute applies to the claims against Hearst, which arise from its publication of news articles regarding this public controversy, which involved: (1) the published accusations of sexual harassment against Buttar, then a candidate for the U.S. House of Representatives; (2) Buttar’s response to those allegations; and (3) the public response to those allegations, including the reactions of several political supporters of Buttar. *Sipple*, 71 Cal. App. 4th at 240 (“[N]ews reporting is free speech and section 425.16 motions can apply to media defendants in libel actions”) (citing *Braun*, 52 Cal. App. 4th at 1044); *see also Matson v. Dvorak*, 40 Cal. App. 4th 539, 548 (1995) (“The right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech. ‘Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment’”) (quoting *Aisenson v. Am. Broad. Co.*, 220 Cal. App. 3d 146, 154 (1990)); *Yorty v. Chandler*, 13 Cal. App. 3d 467, 473 (1970) (quoting *Eva v. Smith*, 89 Cal. App. 324, 328-330, (1928) (“‘An individual who seeks or accepts public office invites and challenges public criticism so far as it may relate to his fitness and qualifications. . . . The right of criticism rests upon public policy . . . .’”)).

The challenged articles, which accurately report on a public controversy directly related to a candidate for the U.S. Congress, fits squarely in the scope of “conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest” that is protected by the anti-SLAPP law. Cal. Civ. Proc. Code § 425.16(e)(4). Plaintiffs acknowledge that the allegations sparked immediate and wide-ranging public interest and discussion and even a public response from Buttar himself. *See, e.g.*, Compl. ¶¶ 37, 39, 50 (referencing various news articles reporting on the controversy and underlying allegations; *id.* ¶ 49 (“Ms. Croydon’s false accusations were

1 *immediately and consistently seized upon by critics across the political spectrum* (emphasis  
 2 added)); *id.* ¶ 38 (referencing the Open Letter supportive of Buttar and questioning Croydon’s  
 3 credibility based on unrelated matters); *id.* ¶ 18 (referencing Buttar’s issuance of a public denial  
 4 of the allegations).

5 For these reasons, the anti-SLAPP law easily applies to Plaintiffs’ claims. Accordingly,  
 6 the burden shifts to the plaintiff to demonstrate “a probability of prevailing on the claim.”  
 7 *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 192 (2005) (citation omitted). The nature of  
 8 this burden is deliberately stringent, and requires that Plaintiffs must “establish evidentiary  
 9 support for [their] claim.” *Navellier v. Sletten*, 106 Cal. App. 4th 763, 775-76 (2003) (citation  
 10 and emphasis omitted). Specifically, Plaintiffs must demonstrate that the claims are “supported  
 11 by a prima facie showing of facts to sustain a favorable judgment if the evidence submitted by  
 12 the plaintiff is credited.” *Taus v. Loftus*, 40 Cal. 4th 683, 713-14 (2007) (citations omitted). If  
 13 Plaintiffs fail to satisfy its burden, the Court must strike the Complaint. Cal. Civ. Proc. Code §  
 14 425.16(b)(1). For the reasons discussed below, Plaintiffs do not meet their burden of pleading a  
 15 probability of prevailing against Hearst on these claims.

## 16 **V. THE COMPLAINT FAILS TO PLEAD SUFFICIENT FACTS TO STATE A** 17 **CLAIM FOR DEFAMATION**

### 18 **1. Hearst’s Published Statements are Substantially True.**

19 To succeed on a defamation claim, the First Amendment and the anti-SLAPP statute  
 20 place the burden on Plaintiffs to show that each statement which they claim is defamatory is, in  
 21 fact, materially false in the context of the whole publication. *See Sullivan*, 376 U.S. 254 at 279-  
 22 80; *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775 (1986); *Vogel v. Felice*, 127 Cal. App.  
 23 4th 1006, 1021-23 (2005). Plaintiffs’ burden to plead, and prove falsity cannot be satisfied, as a  
 24 matter of law, if the challenged statements are substantially true, that is, if “the substance, the  
 25 gist, the sting, of the libelous charge [is] justified.” *Masson v. New Yorker Magazine, Inc.*, 501  
 26 U.S. 496, 517 (1991) (citation omitted). In evaluating whether challenged statements are  
 27 substantially true, a court must examine whether a statement “would have a different effect on  
 28

the mind of the reader from that which the pleaded truth would have produced.” *Id.* (citation omitted). Whether the plaintiff has satisfied this constitutional requirement is for the court to decide as a matter of law. *Id.*; *Reader’s Digest Ass’n v. Superior Ct.*, 37 Cal. 3d 244, 261 (1984) (citing *Sullivan*, 376 U.S. at 271-72). Because the subject matter of Hearst’s reporting – a public controversy involving a candidate for the U.S. House of Representatives that caused some supporters of the candidate to reconsider their endorsements – is a matter of fundamental public concern to voters, Plaintiffs bear the burden of proving that each alleged defamatory statement is false. *Eisenberg v. Alameda Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1382 (1999). For the reasons discussed below, they cannot meet this standard as a matter of law.

As an initial matter, Plaintiffs fail to plead that any specific statement published by Hearst was false. Rather, Plaintiffs plead generally that they were defamed merely by the publication “of an article containing” Croydon’s allegations that Buttar sexually harassed her. Compl. ¶¶ 2, 56. In an action for libel, such generalized pleading is insufficient, as a matter of law, to identify the complained of allegedly defamatory statements. *Flowers v. Carville*, 310 F.3d 1118, 1131 (9th Cir. 2002) (a plaintiff must plead “the precise statements alleged to be false and defamatory, who made them and when”); *see also Glassdoor, Inc. v. Superior Ct.*, 9 Cal. App. 5th 623, 636 (2017) (the court “must determine whether a prima facie showing of actionable statements has been made,” noting that it “is impossible to perform such a task without knowing the exact statements on which liability is predicated”); *Sullivan*, 376 U.S. at 285 (courts must review the actual statements alleged to be defamatory to determine whether they are “of a character which the principles of the First Amendment . . . protect” (citations omitted)).

Even if Plaintiffs’ generalized pleading were sufficient to identify a specific allegedly offending statement, which it is not, Plaintiffs’ claims must nevertheless fail because they do not sufficiently plead that the gist or sting of the challenged Articles “would have a different effect on the mind of the reader from that which the pleaded truth would have produced.” *Masson*, 501 U.S. at 517 (citation omitted); *Partington v. Bugliosi*, 56 F.3d 1147, 1161 (9th Cir. 1995) (“in

determining the ‘gist’ or ‘sting’ of a newspaper article [to assess whether it is actionable, a court] must look at the highlight of the article, the pertinent angle of it”) (alteration in original) (citation and emphasis omitted). To determine the effect of an allegedly libelous statement on a reader, a court must look at the allegedly defamatory statement in the context of the whole publication of which it is a part. *Issa v. Applegate*, 31 Cal. App. 5th 689, 713-14 (2019) (quoting *Kaelin v. Globe Commc’ns Corp.*, 162 F.3d 1036, 1040 (9th Cir. 1998) (“[A] defamatory meaning must be found, if at all, in a reading of the publication as a whole. Defamation actions cannot be based on snippets taken out of context.”)); *Selleck v. Globe Int’l Inc.*, 166 Cal. App. 3d 1123, 1131 (1985) (a court evaluating a claim of defamation by statements may not separate the article into segments, but rather the article “must be read as a whole in order to understand its import and the effect that it was calculated to have on the reader”).

Plaintiffs base their defamation claim on just one component of Hearst’s reporting: the inclusion of Croydon’s claims in their reporting about the public controversy sparked by those claims. But they ignore the context of the articles about which they complain, which, when read in their entirety, truthfully, fairly and impartially reported on events that had already occurred and which were relevant to this matter of significant public interest related to a candidate seeking election to Congress. Hearst’s First Article reported on (a) the fact that allegations regarding Buttar were made in Croydon’s Essay, a fact pled by Plaintiffs (Compl. ¶ 16); (b) that Buttar had *already* issued a denial of those allegations in which he explicitly stated that “[e]very survivor must be heard and *I hope to be allowed the same opportunity to be heard as well*” (emphasis added) (Compl. ¶ 18; Ibarguen Decl. Ex. A), and (c) that some political organizations and others who had previously voiced public support for Buttar’s candidacy had already publicly reconsidered that support in light of the allegations, a reality that Buttar acknowledged *before* Hearst had published on this matter. Ibarguen Decl. Ex. A (“Buttar said, ‘I invite their examination of the issues and our campaign welcomes any scrutiny.’”). Hearst’s Follow-up Article reported on these same topics in light of the Open Letter, which was published by Buttar supporters several days *after* the controversy first arose, and included statements of support from

several individuals who knew Buttar, vouched for his high integrity and character. Compl. ¶ 38; Ibarguen Decl. Ex. A. Read in their entirety, as a court’s evaluation of a defamation claim must be, the Articles are substantially true, and Plaintiffs do not plead facts that support the defamation claim. *See, e.g., Ward v. News Grp. Int’l, Ltd.*, 733 F. Supp. 83, 84-85 (C.D. Cal. 1990) (dismissing defamation claim based on republication of an alleged libel where, considering article as a whole, news report accurately and neutrally reported on the allegedly libelous statements made about a public figure and where publication included plaintiff’s denial of the allegations).

Hearst’s Reporting on Croydon’s allegations and the public reactions to them was plainly a matter of public interest as it related to public discussion of the character and qualifications of a candidate for public office. *Vogel*, 127 Cal. App. 4th at 1015; *Conroy v. Spitzer*, 70 Cal. App. 4th 1446, 1451 (1999); *Matson*, 40 Cal. App. 4th at 548. Plaintiffs do not plead otherwise, nor could they based on the facts they do plead: that Buttar issued a response denying the allegations (Compl. ¶ 18); that Buttar’s critics “immediately and consistently seized upon” Croydon’s allegations (Compl. ¶ 49); that various other news publications reported – many on the same day – about the substance of the allegations and the related fallout (Compl. ¶¶ 27-28, 37, 39, 50); and that a group of individuals who questioned Croydon’s credibility subsequently published an open letter regarding the allegations several days later, demonstrating the continuing interest in this public controversy (Compl. ¶ 38).

Plaintiffs also do not plead that the Articles contained any factual inaccuracies in their account of the *substance* of Croydon’s allegations (apart from their general assertion that the allegations themselves were false), nor do they allege that Hearst’s reporting on Buttar’s denial of the allegations contained any factual errors. Even if they had pleaded such factual errors, “[m]inor inaccuracies do not amount to falsity so long as ‘the substance, the gist, the sting, of the libelous charge be justified.’” *Vogel*, 127 Cal. App. 4th at 1021 (quoting *Masson*, 501 U.S. at 516-17); *Colt v. Freedom Commc’ns, Inc.*, 109 Cal. App. 4th 1551, 1558 (2003) (alleged factual

errors are not actionable defamation unless the inaccuracies are of “such a substantial character” as to have a “different effect on the reader” (citation omitted)).

Indeed, Plaintiffs’ pleaded facts that various other news outlets reported on this same issue – Croydon’s allegations – further demonstrates how little merit exists in their central claim that they were defamed by Hearst because “it published Ms. Croydon’s false allegations that Mr. Buttar sexually harassed her.” Compl. ¶ 56. They do not assert, for example, that they were defamed by *Bay Area Reporter*’s publication of the same day despite the fact that its reporting *also* included the substance of Croydon’s allegations (*see* Ibarguen Decl. Ex. C), nor by *The Intercept*’s publication of the allegations several days later. *See* Ibarguen Decl. Ex. D. Instead, they suggest that the Articles should have included other allegations by particular supporters of Buttar – people who they fail to plead had any knowledge as to the truth of the allegations at the heart of the public controversy at issue – who would have stated that Croydon had a history of making false allegations against others. Compl. ¶ 43. In effect, Plaintiffs suggest *their* editorial decisions about *how* to cover this issue – not whether it should have been reported at all – should be substituted for the editorial decisions made by Hearst. Such an intrusion into the editorial process and choices about what a newsgatherer publishes are plainly unconstitutional, and have been roundly rejected by the courts. *See Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (“The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment.”).

Even so, Plaintiffs plead only conclusory allegations that the omission of these individuals who lacked specific knowledge about the matter in controversy created a defamatory meaning in Hearst’s Articles. Nowhere in the Complaint do Plaintiffs plead that any of their preferred sources could have offered anything but their own speculation about the truth of Croydon’s claims. For example, the *Bay Area Reporter* article discussed by Plaintiffs at Paragraphs 27-28 of the Complaint quotes one individual as stating the opinion that there was “‘absolutely no merit’ to Croydon’s claims,” but it reflects that this opinion was based on the

1 speaker's views about unrelated conduct by Croydon, and makes no assertion that the speaker  
 2 had direct knowledge relevant to establishing the truth or falsity of Croydon's claims about  
 3 Buttar. The same is true of the article published by *The Intercept* which the Complaint quotes as  
 4 reporting that "several people who recounted having disturbing interactions with Croydon that  
 5 caused them to question her credibility" but failing to suggest that those people had any specific  
 6 knowledge of the falsity of Croydon's claims against Buttar. Compl. ¶ 37. Even the Open Letter  
 7 lacks any assertion of knowledge about the truth or falsity of Croydon's claims about Buttar.  
 8 Compl. ¶ 38. As such, Plaintiffs fail to demonstrate through their pleading that the inclusion of  
 9 the speculative beliefs of these individuals about Croydon's credibility would have created a  
 10 "different effect on the reader." *Colt*, 109 Cal. App. 4th at 1558 (citation omitted). Regardless, a  
 11 defamation claim cannot be proven by "scrutinizing what is not said to find 'a defamatory  
 12 meaning which the article does not convey to a lay reader.'" <sup>1</sup> *Forsher v. Bugliosi*, 26 Cal. 3d  
 13 792, 803 (1980) (quoting *Mullins v. Thieriot*, 19 Cal. App. 3d 302, 304 (1971)).

14 Notably, Plaintiffs also do not plead that Hearst's Reporting presented Croydon's  
 15 allegations of sexual harassment as statements of fact that Buttar actually harassed Croydon; nor  
 16 could they, because Hearst's Reporting does not assert or imply that Croydon's allegations were  
 17 anything more than her unproven claims, which were disputed by Buttar. Nevertheless, even if  
 18 Hearst's Articles were read as presenting Croydon's allegations as true – which they do not –  
 19 such a conclusion would be nonactionable opinion because all of the facts supporting such a  
 20 conclusion are disclosed in Hearst's Articles. *Thomas v. L.A. Times Commc'ns, LLC*, 189 F.  
 21 Supp. 2d 1005, 1015 (C.D. Cal. 2002) (granting anti-SLAPP motion where article "merely states  
 22 'opinion[s] on matters of public concern that do not constitute or imply a provable factual

23 \_\_\_\_\_  
 24 <sup>1</sup> Plaintiffs also suggest that Hearst's Follow-up Article was misleading because it "portrayed  
 25 [individuals who defended Buttar's ethics and integrity] as Mr. Buttar's friends, when they are  
 26 fiercely independent political activists." Compl. ¶ 42. Even if the individuals quoted in the  
 27 Follow-up Article had been presented as friends of Buttar, Plaintiffs fail to plead any facts that  
 28 would support the conclusion that such a characterization was defamatory of Buttar or of his  
 Campaign. Similarly, Plaintiffs' bald assertion that the Follow-up Article was misleading  
 because it failed to include a hyperlink to the Open Letter – despite acknowledging that Hearst  
 had reported on the content of the Open Letter (Compl. ¶ 44) – is misguided and, in any event,  
 insufficient to support their defamation claim.



assertion” (quoting *Underwager v. Channel 9 Austl.*, 69 F.3d 361, 366 (9th Cir. 1995), *aff’d*, 45 F. App’x 801 (9th Cir. 2002)); *Partington*, 56 F.3d at 1156-57 (“[W]hen an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment.”); *see also Thomas*, 189 F. Supp. 2d at 1015 (“[B]ecause the reader is free to draw his or her own conclusions based upon those facts, this type of statement is not actionable in defamation” (quoting *Partington*, 56 F.3d at 1156)).

For all of these reasons, Hearst’s Reporting on this public controversy is substantially true, and Plaintiffs fail to meet their burden of pleading falsity.

**2. Plaintiffs Did Not Adequately Demand a Correction or Plead Compensable Damages as Required by California Law.**

California’s correction statute establishes several requirements for a plaintiff seeking to recover general, special or exemplary damages in connection with an alleged libel published by a news publication such as Hearst’s *San Francisco Chronicle*. Plaintiffs fail to satisfy any of those requirements and they are barred from recovering any money damages.

As a threshold matter of law, under California Civil Code § 48a(b), a libel plaintiff seeking to recover general or exemplary damages is required to serve written notice to the publisher of an alleged libel within 20 days of knowledge of the publication, specifying the allegedly libelous statements and demanding correction. Failure to serve such a specific and timely demand of correction limits a plaintiff’s recovery, as a matter of law, to recovery of special damages. Special damages are defined in the statute as “damages that plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, or occupation, including the amounts of money the plaintiff alleges and proves he or she has expended as a result of the alleged libel, and no other.” Cal. Civ. Code § 48a(d)(2); *Freedom Newspapers, Inc. v. Superior Ct.*, 4 Cal. 4th 652, 654-56 (1992); *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 981 (N.D. Cal. 2013) (noting that special damages are actual out-of-pocket losses and must be pled with specificity). Where a plaintiff



1 fails to serve a correction demand and also fails to adequately plead special damages, the claims  
 2 fail on their face and must be stricken under the anti-SLAPP statute. *Anschutz Ent. Grp. v.*  
 3 *Snepp*, 171 Cal. App. 4th 598, 643 (2009) (dismissing defamation claims under anti-SLAPP  
 4 where no legally enforceable correction demand was served by the plaintiff and where special  
 5 damages were pled only through generalized allegations of indeterminate damages and plaintiff  
 6 “presented no proof of special damages”).

7 Here, neither Buttar nor the Buttar Campaign made a correction demand as required  
 8 under § 48a. The Complaint fails to identify *any* direct communication between Buttar and  
 9 Hearst in connection with its reporting on this issue that constitutes a “written notice specifying  
 10 the statements claimed to be libelous and demanding that those statements be corrected.” Cal.  
 11 Civ. Code § 48a(a). The only communication Plaintiffs allege was sent to Hearst after  
 12 publication of its July 21 Article that they allege might have satisfied this requirement is the  
 13 Request for Follow-Up Coverage, which, based on Plaintiffs’ own description, was sent directly  
 14 to a reporter (not the publisher, as required by § 48a), and “requested that the *Chronicle* correct  
 15 the Original Piece by, *inter alia*, interviewing individuals ‘closer to this situation’ (such as Dr.  
 16 Flowers or Ms. Zundmanis).” Compl. ¶ 30. Although Plaintiffs selectively quote the Request  
 17 for Follow-Up Coverage and do not attach the full communication to their Complaint, what they  
 18 do include tellingly reveals that the communication failed to demand any correction of Hearst’s  
 19 First Article consistent with the strict requirements of Cal. Civ. Code § 48a, and, at most, that it  
 20 sought follow-up coverage of this matter of public interest in the form of interviews with third  
 21 parties representing “‘a number of voices’ [that] had been ‘left out’ from the *Chronicle*’s story.”<sup>2</sup>

22 \_\_\_\_\_  
 23 <sup>2</sup> The Complaint also falls short of pleading that the Request for Follow-Up Coverage satisfies  
 24 the correction demand requirements of Civil Code § 48a for several other reasons. Plaintiffs fail  
 25 to plead: (a) that the communication identified the specific allegedly defamatory statements at  
 26 issue and demanded their correction; (b) that the purported correction demand was served on the  
 27 publisher; or (c) that the communication identified a party in interest on behalf of whom the  
 28 purported correction demand was being made. Each of these failures provides an independent  
 basis to find that the July 22 Email, as a matter of law, fails to satisfy the requirements of the  
 correction statute. *See Freedom Newspapers*, 4 Cal. 4th at 654-56 (Section 48a(a) requires that a  
 plaintiff “demand[] that [specific libelous statements] be corrected”); *Field Research Corp. v.*  
*Superior Ct. of S.F.*, 71 Cal. 2d 110, 114 (1969) (holding that Section 48a, by its terms, requires  
 service of a correction demand on “the owner or operator of the newspaper . . . rather than the

1 Compl. ¶ 30. Because the Complaint fails to plead compliance with the correction statute,  
 2 Plaintiffs are barred, as a matter of law, from recovering general or exemplary damages.<sup>3</sup>

3 Plaintiffs are further foreclosed from any recovery in this action because they fail to plead  
 4 any concrete and quantifiable injury, much less damages sufficient to satisfy the minimum  
 5 requirements for pleading special damages. Plaintiffs make only generalized allegations of  
 6 injury purportedly suffered by Buttar individually, and make *no* allegations of injury specific to  
 7 the Campaign. Compl. ¶¶ 51, 53 (alleging Hearst’s reporting caused injury to “*Buttar’s* ethics  
 8 and integrity, harmed *his* professional livelihood and personal relationships, slashed *his* speaking  
 9 and writing opportunities, and gravely damaged the public’s perception of *his* fitness to hold  
 10 political office” and “effectively deprived [*Buttar*] of the ability to speak publicly about two  
 11 critical issues amidst a global pandemic and ominous wildfires: healthcare policy and climate  
 12 justice.”) (emphasis added)). But such general and speculative allegations are insufficient to  
 13 plead special damages. *Gang v. Hughes*, 111 F. Supp. 27, 29 (S.D. Cal. 1953) (“[G]eneral  
 14 allegation of loss of business” is insufficient to show special damages, for which “plaintiff must  
 15 allege the specific manner in which he lost business as a result of the defamation”); *Pridonoff v.*  
 16 *Balokovich*, 36 Cal. 2d 788, 792 (1951) (“general allegation of the loss of a prospective  
 17 employment, sale, or profit will not suffice”).

18 Furthermore, even if Plaintiffs had pled injury with sufficient specificity, they fail to  
 19 sufficiently plead that *any* alleged damages are attributable specifically to Hearst’s Reporting on  
 20 this public controversy. To the contrary, the facts they do plead reveal the impossibility of  
 21 demonstrating that any specific damages Plaintiffs might have plausibly pled resulted solely  
 22 from Hearst’s reporting. For example, the Complaint alleges: (1) Hearst’s Reporting was based  
 23 on and followed publication of Croydon’s Essay detailing her allegations (Compl. ¶ 16); “Ms.

24 \_\_\_\_\_  
 25 originator of the defamatory statements.”); *Anschutz*, 171 Cal. App. 4th at 642 (Section 48a  
 26 requires that the plaintiff serve a retraction demand or, at minimum, be named in the demand).  
 27 <sup>3</sup> Even if Plaintiffs had served a valid demand for correction, which they did not, in order to  
 28 recover exemplary damages, they would be required, as a matter of law, to prove that Hearst  
 acted with actual malice in publishing its reporting about the allegations made against Buttar.  
 Cal. Civ. Code § 48a(3). For the same reasons explained below, Plaintiffs cannot prove actual  
 malice on the facts pled in the Complaint.

Croydon’s false accusations were immediately and consistently seized upon by critics across the political spectrum” (Compl. ¶ 49); and because several other publications – the *Bay Area Reporter*, *The Intercept*, *Bay Guardian*, *48 Hills* and *Mission Local* – all reported on the allegations made against Buttar (Compl. ¶¶ 27, 37, 39, 49). Plaintiffs cannot, as a matter of law, prove that any injury, much less any specific damages, were suffered directly as a result of Hearst’s Reporting on the same information about matter of public interest. Cal. Civ. Code § 48(a)(d)(3); *Anschutz*, 171 Cal. App. 4th at 643 (dismissing defamation action pursuant to anti-SLAPP where Plaintiff fails to plead special damages with specificity and presented no evidence of such losses).

**3. Plaintiffs Cannot Show That Any Statement Was Published with Actual Malice.**

Plaintiffs also fail to state a claim for defamation for the independent reason that the Complaint fails to plead facts that would make their otherwise conclusory allegation of “actual malice” plausible, as they are required to do as a matter of law – much less facts that would satisfy the “clear and convincing” standard applicable to any libel action brought by a public figure. *Sipple*, 71 Cal. App. 4th at 247; *Reader’s Digest*, 37 Cal. 3d at 256 (“If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence, that the libelous statement was made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” (quoting *Sullivan*, 376 U.S. at 279-80)); *Conroy*, 70 Cal. App. 4th at 1454 (same); *Kieu Hoang v. Phong Minh Tran*, 60 Cal. App. 5th 513, 537 (2021) (finding insufficient evidence of actual malice where reporter had no reason to believe source was untrustworthy and where evidence presented by alleged victim of defamation did not show “obvious reasons to doubt the veracity of [the source] or the accuracy of [the] reports.” (quoting *Reader’s Digest*, 37 Cal. 3d at 257)); *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 117 (university football coach, a public figure defamation plaintiff, could not show a likelihood of success on libel claim where he failed to show actual malice by clear and convincing evidence).

1 Plaintiffs are undeniably public figures and therefore bear the heavy burden of satisfying  
 2 the actual malice standard applicable to this action; their Complaint demonstrates unequivocally  
 3 that they cannot meet this burden even at the threshold pleading stage. The only facts Plaintiffs  
 4 plead to support their actual malice burden boils down to (a) failure by Hearst to contact some  
 5 individuals identified by Plaintiffs who, according to Plaintiffs, believed Croydon – based on  
 6 unrelated conduct – to be untrustworthy, and (b) Hearst’s failure to include those individuals’  
 7 purely speculative views about the credibility of Croydon’s allegations against Buttar.<sup>4</sup> Compl.  
 8 ¶¶ 58, 59. This is insufficient, as a matter of law, to satisfy Plaintiffs’ burden.

9 *First*, Plaintiffs cannot plead actual malice by relying on a purported failure to contact  
 10 certain individuals who, based on the facts pled in the Complaint, lacked *any* specific or actual  
 11 knowledge that Croydon’s allegations against Buttar were false. Though the Complaint alleges  
 12 that these individuals *subjectively* believed – based on their own interactions with her or with  
 13 Buttar – that Croydon’s allegations were not credible, the Complaint fails to allege any facts  
 14 indicating that these individuals (or anyone else not contacted by Hearst) could offer actual  
 15 knowledge that the specific allegations against Buttar were false. *See, e.g.*, Compl. ¶ 21  
 16 (alleging Plaintiffs’ informed Hearst of a person willing to speak to Hearst “who can speak about  
 17 [Mr. Buttar’s] character and other claims [Croydon] has made in the past that are *false* –  
 18 including one who alleges that [Croydon] also made *false claims about her husband*”) and ¶ 30  
 19 (requesting that Hearst interview “individuals ‘closer to this situation’ (such as Dr. Flowers or  
 20 Ms. Zundmanis)” but failing to plead that these or other individuals had *actual* knowledge that  
 21 Croydon’s allegations were false); ¶¶ 34-35 (alleging an email sent by Chris Sampson to Hearst  
 22 “stated that Ms. Croydon was a ‘pathological liar’ who had ‘harassed’ one of his friends  
 23 ‘repeatedly in private texts to the point of [his] friend considering suicide’” but failing to plead  
 24

25 <sup>4</sup> Plaintiffs also baselessly insinuate that Hearst’s reporting on the fact that allegations of sexual  
 26 harassment were made publicly against Buttar and that they had drawn public reaction was  
 27 somehow motivated by Buttar’s religion, race or national origin. Compl. ¶¶ 46-47. In addition  
 28 to being vague and unspecific, these bald and conclusory assertions are wholly unsupported by  
 any facts pled in the Complaint, inconsistent with the content of the complained-of Articles, and  
 insufficient to satisfy Plaintiffs’ burden of proving actual malice.

that Sampson knew any facts relating to the veracity of Croydon's claims against Buttar). Simply put, Plaintiffs offer no evidence that any of the individuals they identify knew, as a matter of fact, whether Croydon's allegations were true, and that, at most they could only have provided a subjective opinion that the allegations were not credible.<sup>5</sup>

*Second*, a failure to investigate by contacting cherry-picked sources proposed by Plaintiffs is irrelevant to a determination of whether the statements at issue were published with knowledge of their falsity or reckless disregard for their truth.<sup>6</sup> *Reader's Digest*, 37 Cal. 3d at 247 ("The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy"); *see also Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) ("[F]ailure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard").

For these reasons, Plaintiffs fail to adequately plead Hearst acted with "actual malice" in its reporting on this public controversy, and fall well short of the applicable "clear and convincing" standard. *McGarry*, 154 Cal. App. 4th at 114 (actual malice standard requires showing by plaintiff of "evidence of actual knowledge of the falsity or reckless disregard for its falsity must be of such a character as to command the unhesitating assent of every reasonable mind") (citation and quotation marks omitted); *Harte-Hanks Commc'ns*, 491 U.S. at 688; *St.*

<sup>5</sup> The Complaint also pleads other facts about these individuals' statements elsewhere that similarly are insufficient to satisfy their pleading burdens as a matter of law. *See* Compl. ¶ 38 (quoting from an "Open Letter Regarding Ms. Croydon's Credibility," failing to allege the authors had any knowledge specific to Croydon's allegations against Buttar); ¶ 37 (quoting from a July 23, 2020 article published by *The Intercept* which referred to "several people who recounted having disturbing interactions with Croydon that caused them to question her credibility" but which does not reflect those people had any specific knowledge of the falsity of Croydon's claims against Buttar); ¶¶ 27-28 (quoting from a July 21, 2020 article in the *Bay Area Reporter*, which published the subjective assertion of Martine Zundmanis that there was "'absolutely no merit' to Croydon's claims," but basing that opinion on unrelated interactions with Croydon and Buttar and failing to identify any specific knowledge that Croydon's claims against Buttar were false).

<sup>6</sup> Furthermore, all of the facts pled to support the proposition that Hearst had actual malice emanate from communications that Plaintiffs plead occurred after Hearst published its First Article. *Compare*, *Ibarguen Aff. Ex. A* (showing publication of Hearst's First Article at 8:19 p.m.) *with* Compl. ¶ 21 (referring to the Request for Follow-Up Coverage sent at 8:30 p.m.).

1 *Amant v. Thompson*, 390 U.S. 727, 731 (1968) (“[R]eckless conduct is not measured by whether  
 2 a reasonably prudent man would have published, or would have investigated before publishing.  
 3 There must be sufficient evidence to permit the conclusion that the defendant in fact entertained  
 4 serious doubts as to the truth of his publication.”).

5 **4. Plaintiffs’ Derivative Claim Under Cal. Bus. & Prof. Code §§ 17200, et seq. Also**  
 6 **Fails.**

7 Plaintiffs’ Unfair Competition Law (“UCL”) claim, as pleaded, is entirely derivative of  
 8 and relies entirely on their failed defamation claim. Compl. ¶ 66. Because the UCL claim relies  
 9 entirely on and is derivative of the defamation claim, the UCL claim must be dismissed for the  
 10 same reasons as Plaintiffs’ failed defamation claim. *Hawran v. Hixson*, 209 Cal. App. 4th 256,  
 11 277 (2012) (because UCL claims are derivative of alleged violations of other laws, a UCL claim  
 12 based on the same allegedly defamatory statements “stands or falls with that underlying claim.”).

13 **VI. PLAINTIFF BUTTAR CAMPAIGN FAILS TO STATE A CLAIM**

14 Further illustrating the frivolous nature of this lawsuit, Plaintiff Buttar Campaign fails to  
 15 plead that *it* was the subject of any alleged defamatory statement, and further fails to plead that *it*  
 16 suffered any injury independent of the purported injury to Buttar. Thus, the Buttar Campaign  
 17 fails to state a claim upon which relief could be granted, and its claims should be dismissed.

18 *First*, it is black-letter federal and state law that a statement cannot defame a plaintiff if it  
 19 does not identify the plaintiff. *Sullivan*, 376 U.S. at 288 (federal constitutional law requirement);  
 20 *Blatty v. N.Y. Times Co.*, 42 Cal. 3d 1033, 1044 (1986) (“To allow a plaintiff who is not  
 21 identified, either expressly or by clear implication, to institute such an action poses an  
 22 unjustifiable threat to society” and noting that, without such a requirement, the damage to the  
 23 news media would be significant and would chill its coverage of topics of general concern).  
 24 Here, the Complaint is devoid of any factual pleading – whether originating with Croydon’s  
 25 allegations or contained in Hearst’s reporting on them – that is “of and concerning” the Buttar  
 26 Campaign. In the absence of such a statement, the Buttar Campaign fails to plead any basis for  
 27 its defamation claim, and the claim must fail as a matter of law.





1 DATED: December 2, 2021

2 Respectfully submitted,  
3 DAVIS WRIGHT TREMAINE LLP  
4 THOMAS R. BURKE

5 THE HEARST CORPORATION  
6 JONATHAN R. DONNELLAN (*pro hac vice*)  
7 DIEGO IBARGUEN (*pro hac vice*)

8 By: /s/ Diego Ibarguen

9 *Attorneys for Defendant Hearst Communications,*  
10 *Inc.*